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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,319	09/11/2003	Stephen Baldwin	KCC 4982 (K-C 19,185)	5393

321 7590 07/26/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
ANDERSON, CATHARINE L	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/660,319	BALDWIN, STEPHEN ET AL.	
	Examiner	Art Unit	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5/10/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2 May 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Gatto fails to disclose a rheology enhancer as required in Claim 1, it is noted that the rheology enhancers of amended claim 1 are merely deleted from the instant claim because they are disclosed by Gatto, not because they are disclosed in the instant specification as inferior or less preferred. Further, it is noted that Gatto discloses poly-alpha-olefins alone, which fulfills the limitations of the claims.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 13-18, and 37-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Gatto et al. (6,570,054).

With respect to claim 1, Gatto discloses an absorbent article, as shown in figure 1, comprising a liner having a lotion formulation deposited on the body-facing surface, as disclosed in column 5, lines 1-11, in an amount from about 0.05 to 100 mg/cm^2, as disclosed in column 33, lines 13-16. The lotion formulation comprises from 10-89% of an emollient (column 18, lines 65-67), from 10-50% of a structurant (column 22, lines 57-61), and from 0.1-40% of a rheology enhancer (column 11, lines 25-28). The rheology enhancer comprises poly-alpha-olefins alone, as disclosed in column 15, lines 58-65.

With respect to claims 2 and 3, the emollient is present in an amount of 60-80%, as disclosed in column 18, lines 65-67.

With respect to claim 4, the structurant is present in an amount of 20-40%, as disclosed in column 22, lines 57-60.

With respect to claims 5 and 6, the rheology enhancer is present in an amount of 1-25%, as disclosed in column 11, lines 25-28.

With respect to claim 13, the lotion formulation further comprises antibacterial and antiviral actives, as disclosed in column 24, lines 59-67.

With respect to claim 14, the emollient comprises polysiloxanes, fatty alcohols, fatty acids, or lanolin, as disclosed in column 16, lines 35-61.

With respect to claim 15, the structurant has a melting point of about 45°-85° C, as disclosed in column 19, lines 42-45.

With respect to claim 16, the structurant comprises waxes, as disclosed in column 22, lines 38-43.

With respect to claims 17 and 18, the lotion formulation is present in the amount of 10-40 mg/cm^2, as disclosed in column 33, lines 13-16.

With respect to claims 37-42, the rheology enhancer further comprises mineral oil, as disclosed in column 14, lines 63-64.

Claims 7-12 and 19-36 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gatto et al. (6,570,054).

Gatto discloses the lotion formulation of the claimed invention, comprising the identical components in the identical amounts. Therefore, the lotion composition of Gatto will exhibit the identical physical properties of the instant invention, and inherently have a melt point viscosity and a temperature viscosity of 100,000-500,000 cPs and 100-5,000 cPs, respectively. The lotion composition of Gatto will also inherently exhibit a penetration hardness of about 60-120.

In the alternative, Gatto discloses a desired apparent viscosity of 1-100,000 cPs, as disclosed in column 8, lines 53-58. Gatto further discloses in column 40, Table 7, a desired Yield Stress of 10-80. It would therefore be obvious to one of ordinary skill in

the art at the time of invention to provide the lotion composition of Gatto with melt point and temperature viscosities of 100,000-500,000 cPs and 100-5,000 cPs, respectively, and a penetration hardness of about 60-120, since it has been held that where the general conditions of the claim (i.e. a viscous yet stable lotion) are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Allen,* 105 USPQ 233.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 and 10-18 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/659,967. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would be obvious to one of

skill in the art to employ the skin care lotion composition in use with an absorbent article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cla
July 23, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER